The real objection to allowing the wife to recover is based on practical grounds. The right to recover for the services which the wife would probably have rendered in the houshold still belongs to the husband. *Mewhirter* v. *Hatten*, 42 Iowa, 288. Now, where the wife recovers for her incapacity to work outside the family, and the husband recovers for her incapacity to work in the household, it is almost inevitable that juries will allow a lapping over of one ground of recovery on the other, thus inflicting upon the defendant double damages. The more work a wife is likely to do in the household, the less is she likely to perform outside, and there should therefore be a total sum, equal to what the husband would recover at common law, above which the value of her entire capacity to labor should not ascend. Yet this is not likely to be regarded by juries, especially when the trials by the husband and wife are separately conducted. Admitting, however, as we must, that the principal case is correct, the difficulty of double damages might well be minimized by legislative enactment compelling the actions to be joined, or providing some short period of limitations for bringing them, making it necessary that both should be pending at the same time.

Liability for the Negligence of an Independent Contractor. — The rule is generally stated that an employer is not liable for the negligence of an independent contractor except in three cases: where the act the contractor is employed to do is one which, if done by the employer, would be done at his peril; where the contractor is employed to execute certain work which the employer is under a statutory duty to perform; where the work which the contractor is employed to do is unlawful or a public nuisance. *Engell* v. *Eureka Club*, 137 N. Y. 100. In cases other than the above, when the injury is due to the collateral negligence of the contractor, the employer is not liable. *Connors* v. *Hennessy*, 112 Mass. 96.

These exceptions seem to have been considerably extended in a recent case, *Covington Bridge Co.* v. *Steinbrook*, 55 N. E. Rep. 618 (Ohio). The defendant had employed a contractor to tear down a building that was partially destroyed by fire. When the building had been so far torn down as to leave it in a dangerous condition, the contractor employed a subcontractor to complete the contract. Owing to the negligence of the latter, part of a wall fell and damaged the plaintiff's house which adjoined. The defendant was held liable for the injury on the broad principle that one employing a contractor cannot escape liability for an injury that might have been anticipated as a probable consequence if reasonable care were omitted in the performance of the contract. Though the court professed to recognize the independent contractor principle, there is probably no kind of contract in which a negligent act of the contractor may not work an injury, and the language of the court is certainly broad enough to extend to all. Unless, indeed, it was intended to restrict the rule of the principal case to building contracts, — an intent which nowhere appears in the decision, — the principle may for all practical purposes be regarded as abrogated in Ohio.

There seems to have grown up a more or less well recognized rule that where the contract contemplates labor to be done on a highway, the employer owes the public the duty of an insurer against the contractor's negligence. *Hill* v. *Tottenham*, 106 L. T. Rep. 127; *Penny* v. *Wimbledon*

Council, [1899] 2 Q. B. 72; *Halliday* v. *Telephone Co.*, [1899] 2 Q. B. 392; *The Snark*, [1899] P. D. 74. And those who thus interfere, though lawfully, with the public's superior right to the use of the way, may well be held to this increased liability. But in other cases, where the act is one which the employer himself from a lack of the requisite skill could not perform, it is surely unjust to hold him liable for the negligence of a contractor, in the selection of whom he has used due diligence. On the introduction of the independent contractor exception, it appeared to be of considerable extent, but the tendency in many jurisdictions is greatly to qualify it, and place it more and more in line with the rules governing master and servant. As the doctrine does not seem to have outlived its usefulness, it is satisfactory to note that the weight of authority, in this country at least, is still against the principal case.

MARRIAGE CONTRACTS AND THE STATUTE OF FRAUDS. — Mutual promises to marry have been generally treated by the courts as subject to the same rules as ordinary business contracts. But, in a recent Maryland case, it was held that the section of the Statute of Frauds forbidding action to be brought on any agreement, not to be performed within one year, unless evidenced by a written agreement, does not include marriage contracts. *Lewis* v. *Tapman*, 44 Atl. Rep. 459 (Md.). The grounds for the decision were, first, that in 1676, when the Statute of Frauds was passed, it being unsettled that an action could be maintained at common law on marriage agreements, it is not legitimate to infer that parliament intended to include such contracts, and, secondly, that, since the contract affects the very basis of society, it should not be massed with other contracts under the general head of "any agreement."

In the seventeenth century, marriage itself having been under the sole cognizance of the ecclesiastical courts for five hundred years, there was considerable dispute as to whether anything so closely akin to it as the contract to marry should come under common law jurisdiction. An action on such a contract, however, was allowed in 1639, *Stretch* v. *Parker*, Rolle, Abr. 22, and again in 1672, *Holcroft* v. *Dickenson*, 1 Cart. 233. In 1676, therefore, when the statute was passed, had parliament intended to exclude such contracts, it seems that the intention would have been clearly expressed. Further, as the clause of the statute regarding agreements in consideration of marriage was held in 1679 to include the marriage contract, *Philpot* v. *Wolcott*, Skinner, 24, an interpretation later overruled, it appears that the courts did not then regard the marriage agreement as excluded by parliament. Nor can a better justification be found in any essential difference in nature. That it is unusual and unnatural to find exact written evidence of marriage promises, may be an argument for expressly excepting them from the statute; but on the other hand this usual lack of exact evidence makes such contracts most likely to be subject to the very fraud, perjury, or half unconscious misstatement, after the lapse of a considerable time, that the statute was constructed to prevent. To bring the contract into court is to treat it as a business agreement, and it is, therefore, not unfair to insist on the same evidence that is required in all business agreements.

The point has apparently never been decided in England. In America it is generally held that the marriage contract is within the statute. *Derby* v. *Phelps*, 2 N. H. 515; *Nichols* v. *Weaver*, 7 Kan. 373; *Ullman*